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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SMARTMETRIC, INC.,

Case No. 11-CV-7126 MWF (AJWx)

Plaintiff,

v.

MASTERCARD INTERNATIONAL  
INCORPORATED AND VISA INC.,

Defendants.

AND RELATED COUNTERCLAIMS

DECLARATION OF EDWARD GUSSIN  
IN SUPPORT OF SMARTMETRIC INC.'S  
OPPOSITION TO DEFENDANTS' JOINT  
EX PARTE APPLICATION TO  
EXCLUDE THE REPORT AND  
DECLARATION OF PLAINTIFF'S  
EXPERT EDWARD GUSSIN FILED IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT  
OF INFRINGEMENT OF U.S. PATENT  
6,792,464 CLAIMS 1, 5-7, 11, AND 13,  
AND FOR DISMISSAL WITH  
PREJUDICE OF THE ANTICIPATION  
AFFIRMATIVE DEFENSE

Date: April 15, 2013

Time: 10:00 a. m.

Place: 1600 Spring, Court of District Judge  
Michael W. Fitzgerald

I, Edward L. Gussin, declare that:

1. I am a retained expert for Smartmetric, Inc. in the captioned case. I am the author of a report (the "report") dated March 1, 2013, on the infringement and validity issues in this case.

1       2. In late February, 2013, I received over 1.5 million pages that I am  
2 informed Defendants had produced in mid-February, 2013. After many hours  
3 reviewing these documents, I found among them VISA documents describing  
4 stand-in processing to which the VISA EMV system may direct a transaction that  
5 begins with insertion of an EMV data card in a system reader, an element called  
6 for in the claims of the '464 patent. These documents also included MasterCard  
7 documents describing similar stand-in processing, which also includes a financial  
8 institution table, called FIT, in their EMV system. None of the many non-  
9 confidential documents about the VISA and MasterCard EMV systems that I had  
10 reviewed as of the end of 2012, and as of mid-February, 2013, disclosed this  
11 important information. These documents produced in February, 2013, were  
12 essential and indispensable to my report.

13       3. My 3/1/ 2013 report in this case cites to, and relies on these documents in  
14 finding that the VISA and MasterCard EMV systems include all of the elements of  
15 claims 1 and 14 of the '464 patent.

16       4. Attached to this declaration as Exhibit 1 is a copy of two pages from the  
17 December, 2012, report of Dr. Grimes, a Defendant expert, identifying as  
18 document groups he reviewed, the VISA stand-in processing and MasterCard stand  
19 in processing I refer to in paragraph 2. above.

20       Executed under penalty of perjury under the laws of the United States of  
21 America at Agoura Hills, CA on March 15, 2013.  
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23       Edward L. Gussin  
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## **Appendix C – Materials Considered**

1. SmartMetric Inc.'s Complaint For Infringement of U.S. Patent No. 6,792,464 – August 29, 2011 [DI 1]
2. Visa Inc.'s Answer, Affirmative Defenses, and Counterclaims to SmartMetric Inc.'s Complaint – May 23, 2012 [DI 25]
3. SmartMetric Inc.'s Responses to Visa Inc.'s First Set of Interrogatories (1-15) – July 6, 2012
4. Claim Construction Order, *SmartMetric, Inc. v. Mastercard Int'l Inc., et al.*, CV-11-7126 MWF (FMOx), October 3, 2012 [DI 65]
5. Claim Construction Order, *SmartMetric, Inc. v. MasterCard Int'l Inc.*, CV10-1864-JHN (FMOx), May 18, 2011 [DI 53]
6. *SmartMetric, Inc. v. MasterCard Int'l Inc. et al.*, No. 2011-1497 (Fed. Cir. Apr. 11, 2012) [DI 65]
7. Visa Integrated Circuit Card Specification (VIS) – Version 1.5 – May 2009
8. Visa Smart Debit/Credit (VSDC) Issuer Implementation Guide for VIS Version 1.4.1 – Version 5.0 – Effective: October 2010
9. Visa Smart Debit/Credit System Technical Manual – Version 3.0 – December 9, 2009
10. Visa Security Guidelines – VSDC Applications – Version 1.0 – 1 March 2009
11. Visa Security Guidelines – Multi-Application Platforms – Version 1.0 – 1 March 2009
12. Visa Integrated Circuit Card – Application Overview – Version 1.4.0
13. Integrated Circuit Card Specification (VIS) 1.5 Updates List – Version 4 – March 2012
14. Transaction Acceptance Device Guide – Version 2.0 – Effective: March

2011

15. Transaction Acceptance Device Requirements – Version 1.0 – May 2009
16. Visa Contactless Payment Specification – Version 2.1 – May 2009
17. Visa Contactless Payment Specification (VCPS) 2.1 Updates List – Version 2 – August 2011
18. Visa Smart Debit and Credit (VSDC) Personalization Specification – Requirements for Common Personalization of VIS 1.5 and VCPS 2.1 Applications – Version 2.0 – September 2009
19. Visa Smart Debit and Credit (VSDC) Personalization Specification 2.0 Updates List – Version 1 – May 2012
20. Visa Smart Debit/Credit (VSDC) Acquirer Implementation Guide – Version 5.0 – Effective: June 2011